

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1349 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

PHYSICAL RESEARCH LABORATORY

Versus

ASHOK GHANSHYAMBHAI DAVE

Appearance:

MR SH SANJANWALA, SENIOR ADVOCATE WITH MR.

RS SANJANWALA for Petitioner

DR.MUKUL SINHA WITH MR RC PATHAK for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/04/97

ORAL JUDGEMENT

Rule. Mr.Pathak waives service of the Rule.

This Special Civil Application is directed against the Award dated 6.1.1997 passed by the Labour Court, Ahmedabad in Reference (LCA) No. 277 of 1980. The petitioner Physical Research Laboratory has been

contesting the claim of the respondent on the ground that Physical Research Laboratory is not an industry and therefore, there is no question of reference. Mr.Sanjanwala has cited Supreme Court judgment dated 8.4.1997 in Civil Appeal No. 2663 of 1997 arising out of SLP(C) No. 9846 of 1992. The Supreme Court considered the contentions raised on behalf of Physical Research Laboratory and in this judgment it has been held in categorical terms that Physical Research Laboratory is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organisation carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs, as ordinarily understood. The Supreme Court allowed the Appeal of Physical Research Laboratory and set aside the Award passed by the Labour Court, Ahmedabad in Reference No.(LCA) 105 of 1982 wherein the respondent who had been appointed by Physical Research Laboratory as Scientific Glass Blower on 25.10.1948 and who had continued to work as such till 11.5.1976 when he was transferred to Photography Documentation Services on a post which was non-technical and administrative and on 31.12.1978 he attained the age of 58 years and was accordingly retired from the service with effect from 1.1.1979. The respondent in the case before the Supreme Court was aggrieved of his retirement at the age of 58 years and his claim was that he should have been made to retire at the age of 60. This dispute was adjudicated by the Labour Court. The Labour Court had rejected the contention of the Physical Research Laboratory that it was not an industry. The Supreme Court after considering the relevant decision in this regard including the case of Bangalore Water Supply has held that Physical Research Laboratory is not an industry and accordingly the Award which was passed way back in 1982 has been set aside.

It is not contested that this judgment is not in personem but Dr.Sinha has argued with reference to Sections 17 and 17A of the Industrial Disputes Act and has argued that this Award dated 6.1.1997 has become final and that equity is in favour of the petitioner. I have considered the submissions made by Dr.Sinha but I do not find any force in this contention. Once the Supreme Court has held that Physical Research Laboratory is not an Industry, the Supreme Court has set aside the Award which was passed against Physical Research Laboratory way back in 1982 and has not said that this judgment will have only prospective effect or that it would save the

Awards which have already been passed and are under challenge at any stage it can't be now considered that the Award should not be disturbed because of the provision of Sections 17 and 17A of the Industrial Disputes Act or on the ground of equity. Once it is held that Physical Research Laboratory is not an industry the reference which was made to the Labour Court has to be taken to be misconceived and the contention which the Physical Research Laboratory has taken deserves to be accepted and must succeed. The Award therefore, cannot be sustained in the eye of law because of the latest decision of the Supreme Court on the point holding that Physical Research Laboratory is not an industry.

Consequently this Special Civil Application is allowed and the impugned Award dated 6.1.1997 passed by the Labour Court, Ahmedabad in Reference (LCA) No.277 of 1980 is set aside only on the short ground that Physical Research Laboratory is not an industry and therefore without examining the merits of the case Rule is made absolute. No order as to costs.
